

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 15 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| THE STATE OF ARIZONA, |) | 2 CA-CR 2010-0331-PR |
| |) | DEPARTMENT B |
| Respondent, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| SAMUEL ANTONIO PARRA, |) | the Supreme Court |
| |) | |
| Petitioner. |) | |
| _____ |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20042732

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Samuel A. Parra

Florence
In Propria Persona

K E L L Y, Judge.

¶1 Samuel Parra petitions this court for review of the trial court's denial of his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will

not disturb this ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 After a jury trial, Parra was convicted of sexual abuse of a minor under the age of eighteen, two counts of attempted sexual conduct with a minor, molestation of a child, sexual conduct with a minor under the age of fifteen, and sexual abuse of a minor under the age of fifteen. The trial court sentenced him to a total prison term of thirty-seven years. We affirmed his convictions and sentences on appeal. *State v. Parra*, No. 2 CA-CR 2006-0436 (memorandum decision filed Mar. 13, 2008).

¶3 After Parra filed a notice of post-conviction relief, court-appointed counsel notified the trial court that he had thoroughly reviewed the record and was “unable to find a meritorious issue of law or fact which may be raised as a basis for relief pursuant to Rule 32.” *See* Ariz. R. Crim. P. 32.4(c). Parra then filed a pro per petition for post-conviction relief, asserting that his trial counsel had been ineffective for various reasons and that the court had erred in denying his motion for substitute counsel made during trial and by appointing new counsel to represent Parra at sentencing. Because of delays in Parra’s receipt of various transcripts, the court granted Parra leave to file a supplemental petition. Before Parra filed that supplement, however, the trial court summarily denied Parra’s petition for post-conviction relief. Parra then filed two supplemental petitions, the first augmenting his argument that the court had erred when it denied his request for new counsel during trial and the second adding claims of ineffective assistance of appellate and Rule 32 counsel.

¶4 Recognizing that it had ruled on Parra’s petition prematurely, the trial court reviewed the first supplemental petition but denied Parra’s claim of trial error as precluded. It did not, however, address the claims Parra raised in his second

supplemental petition, which he had filed a few days before the court issued its ruling. In his motion for rehearing, Parra informed the court it had not addressed the claims raised in his second supplemental petition and argued the court had erred by summarily denying his other claims. The court, noting that it had not given Parra permission to file the second supplemental petition and that the filing was therefore improper, nonetheless addressed and summarily denied Parra's claim of ineffective assistance of appellate counsel, but did not address his claim of ineffective assistance of Rule 32 counsel. In the same order, the court denied Parra's motion for rehearing.

¶5 In his petition for review, Parra repeats the claims he made below and argues the trial court erred by "prematurely rul[ing]" on his petition for post-conviction relief before receiving his supplemental filings. As to the claims the court addressed, Parra fails to explain how the court erred in rejecting them and, accordingly, has failed to meet his burden of demonstrating the court abused its discretion in doing so. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review shall contain "[t]he reasons why the petition should be granted"); *cf. State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) ("[m]erely mentioning an argument is not enough"; failure to argue claim constitutes abandonment on appeal).

¶6 In any event, our review of the record shows the trial court correctly rejected Parra's claims in thorough, well-reasoned minute entries and we find no reason to rehash the court's rulings here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). *Cf., State v. Lopez*, 223 Ariz. 238, ¶ 7, 221 P.3d 1052, 1054 (App. 2009) (no abuse of discretion when court declined to consider claims first raised in Rule 32 reply; petitioner "essentially sought to amend his petition without the leave of the trial court," in violation of Rule 32.6(d)). Moreover, Parra's belated claim of ineffective

assistance of Rule 32 counsel, which the court did not specifically address, is without merit. A non-pleading defendant, such as Parra, has no constitutional right to effective assistance of Rule 32 counsel and such a claim is not cognizable in a petition for post-conviction relief. *See State v. Mata*, 185 Ariz. 319, 336-37, 916 P.2d 1035, 1052-53 (1996); *State v. Krum*, 183 Ariz. 288, 291-92, 903 P.2d 596, 599-600 (1995). As for Parra's argument that the court erred by addressing in separate minute entries the claims raised in his original and supplemental petitions, Parra does not explain how this procedure was detrimental to him.

¶7 For the reasons stated, although we grant Parra's petition for review, we deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge